

1 **Rule 45. Subpoena.**

2 **(a) Form; issuance.**

3 (a)(1) Every subpoena shall:

4 (a)(1)(A) issue from the court in which the action is pending;

5 (a)(1)(B) state the title and case number of the action, the name of the court from which it is
6 issued, and the name and address of the party or attorney responsible for issuing the subpoena;

7 (a)(1)(C) command each person to whom it is directed

8 (a)(1)(C)(i) to appear and give testimony at a trial, hearing or deposition, or

9 (a)(1)(C)(ii) to appear and produce for inspection, copying, testing or sampling
10 documents, electronically stored information or tangible things in the possession, custody or
11 control of that person, or

12 (a)(1)(C)(iii) to copy documents or electronically stored information in the possession,
13 custody or control of that person and mail or deliver the copies to the party or attorney
14 responsible for issuing the subpoena before a date certain, or

15 (a)(1)(C)(iv) to appear and to permit inspection of premises;

16 (a)(1)(D) if an appearance is required, specify the date, time and place for the appearance;

17 and

18 (a)(1)(E) include a notice to persons served with a subpoena in a form substantially similar to
19 the ~~court~~ approved subpoena form. A subpoena may specify the form or forms in which
20 electronically stored information is to be produced.

21 (a)(2) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it,
22 who shall complete it before service. An attorney admitted to practice in Utah may issue and sign a
23 subpoena as an officer of the court.

24 **(b) Service; fees; prior notice.**

25 (b)(1) A subpoena may be served by any person who is at least 18 years of age and not a party
26 to the case. Service of a subpoena upon the person to whom it is directed shall be made as provided
27 in Rule [4\(d\)](#).

28 (b)(2) If the subpoena commands a person's appearance, the party or attorney responsible for
29 issuing the subpoena shall tender with the subpoena the fees for one day's attendance and the
30 mileage allowed by law. When the subpoena is issued on behalf of the United States, or this state, or
31 any officer or agency of either, fees and mileage need not be tendered.

32 (b)(3) If the subpoena commands a person to copy and mail or deliver documents or
33 electronically stored information, to produce documents, electronically stored information or tangible
34 things for inspection, copying, testing or sampling or to permit inspection of premises, the party or
35 attorney responsible for issuing the subpoena shall serve each party with the subpoena by delivery or
36 other method of actual notice before serving the subpoena.

37 **(c) Appearance; resident; non-resident.**

38 (c)(1) A person who resides in this state may be required to appear:

39 (c)(1)(A) at a trial or hearing in the county in which the case is pending; and

40 (c)(1)(B) at a deposition, or to produce documents, electronically stored information or
41 tangible things, or to permit inspection of premises only in the county in which the person resides,
42 is employed, or transacts business in person, or at such other place as the court may order.

43 (c)(2) A person who does not reside in this state but who is served within this state may be
44 required to appear:

45 (c)(2)(A) at a trial or hearing in the county in which the case is pending; and

46 (c)(2)(B) at a deposition, or to produce documents, electronically stored information or
47 tangible things, or to permit inspection of premises only in the county in which the person is
48 served or at such other place as the court may order.

49 **(d) Payment of production or copying costs.** The party or attorney responsible for issuing the
50 subpoena shall pay the reasonable cost of producing or copying documents, electronically stored
51 information or tangible things. Upon the request of any other party and the payment of reasonable costs,
52 the party or attorney responsible for issuing the subpoena shall provide to the requesting party copies of
53 all documents, electronically stored information or tangible things obtained in response to the subpoena
54 or shall make the tangible things available for inspection.

55 **(e) Protection of persons subject to subpoenas; objection.**

56 (e)(1) The party or attorney responsible for issuing a subpoena shall take reasonable steps to
57 avoid imposing an undue burden or expense on the person subject to the subpoena. The court shall
58 enforce this duty and impose upon the party or attorney in breach of this duty an appropriate
59 sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

60 (e)(2) A subpoena to copy and mail or deliver documents or electronically stored information, to
61 produce documents, electronically stored information or tangible things, or to permit inspection of
62 premises shall comply with Rule [34\(a\)](#) and [\(b\)\(1\)](#), except that the person subject to the subpoena
63 must be allowed at least 14 days after service to comply.

64 (e)(3) The person subject to the subpoena or a non-party affected by the subpoena may object
65 under Rule [37](#) if the subpoena:

66 (e)(3)(A) fails to allow reasonable time for compliance;

67 (e)(3)(B) requires a resident of this state to appear at other than a trial or hearing in a county
68 in which the person does not reside, is not employed, or does not transact business in person;

69 (e)(3)(C) requires a non-resident of this state to appear at other than a trial or hearing in a
70 county other than the county in which the person was served;

71 (e)(3)(D) requires the person to disclose privileged or other protected matter and no
72 exception or waiver applies;

73 (e)(3)(E) requires the person to disclose a trade secret or other confidential research,
74 development, or commercial information;

75 (e)(3)(F) subjects the person to an undue burden or cost;

76 (e)(3)(G) requires the person to produce electronically stored information in a form or forms to
77 which the person objects;

78 (e)(3)(H) requires the person to provide electronically stored information from sources that
79 the person identifies as not reasonably accessible because of undue burden or cost; or

80 (e)(3)(I) requires the person to disclose an unretained expert's opinion or information not
81 describing specific events or occurrences in dispute and resulting from the expert's study that
82 was not made at the request of a party.

83 (e)(4)(A) If the person subject to the subpoena or a non-party affected by the subpoena
84 objects, the objection must be made before the date for compliance.

85 (e)(4)(B) The objection shall be stated in a concise, non-conclusory manner.

86 (e)(4)(C) If the objection is that the information commanded by the subpoena is privileged or
87 protected and no exception or waiver applies, or requires the person to disclose a trade secret or
88 other confidential research, development, or commercial information, the objection shall
89 sufficiently describe the nature of the documents, communications, or things not produced to
90 enable the party or attorney responsible for issuing the subpoena to contest the objection.

91 (e)(4)(D) If the objection is that the electronically stored information is from sources that are
92 not reasonably accessible because of undue burden or cost, the person from whom discovery is
93 sought must show that the information sought is not reasonably accessible because of undue
94 burden or cost.

95 (e)(4)(E) The objection shall be served on the party or attorney responsible for issuing the
96 subpoena. The party or attorney responsible for issuing the subpoena shall serve a copy of the
97 objection on the other parties.

98 (e)(5) If objection is made, or if a party requests a protective order, the party or attorney
99 responsible for issuing the subpoena is not entitled to compliance but may request an order to compel
100 compliance under Rule [37\(a\)](#). The objection or request shall be served on the other parties and on
101 the person subject to the subpoena. An order compelling compliance shall protect the person subject
102 to or affected by the subpoena from significant expense or harm. The court may quash or modify the
103 subpoena. If the party or attorney responsible for issuing the subpoena shows a substantial need for
104 the information that cannot be met without undue hardship, the court may order compliance upon
105 specified conditions.

106 **(f) Duties in responding to subpoena.**

107 (f)(1) A person commanded to copy and mail or deliver documents or electronically stored
108 information or to produce documents, electronically stored information or tangible things shall serve
109 on the party or attorney responsible for issuing the subpoena a declaration under penalty of law
110 stating in substance:

111 (f)(1)(A) that the declarant has knowledge of the facts contained in the declaration;

112 (f)(1)(B) that the documents, electronically stored information or tangible things copied or
113 produced are a full and complete response to the subpoena;

114 (f)(1)(C) that the documents, electronically stored information or tangible things are the
115 originals or that a copy is a true copy of the original; and

116 (f)(1)(D) the reasonable cost of copying or producing the documents, electronically stored
117 information or tangible things.

118 (f)(2) A person commanded to copy and mail or deliver documents or electronically stored
119 information or to produce documents, electronically stored information or tangible things shall copy or
120 produce them as they are kept in the usual course of business or shall organize and label them to
121 correspond with the categories in the subpoena.

122 (f)(3) If a subpoena does not specify the form or forms for producing electronically stored
123 information, a person responding to a subpoena must produce the information in the form or forms in
124 which the person ordinarily maintains it or in a form or forms that are reasonably usable.

125 (f)(4) If the information produced in response to a subpoena is subject to a claim of privilege or of
126 protection as trial-preparation material, the person making the claim may notify any party who
127 received the information of the claim and the basis for it. After being notified, the party must promptly
128 return, sequester, or destroy the specified information and any copies of it and may not use or
129 disclose the information until the claim is resolved. A receiving party may promptly present the
130 information to the court under seal for a determination of the claim. If the receiving party disclosed the
131 information before being notified, it must take reasonable steps to retrieve the information. The
132 person who produced the information must preserve the information until the claim is resolved.

133 **(g) Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that
134 person is punishable as contempt of court.

135 **(h) Procedure when witness evades service or fails to attend.** If a witness evades service of a
136 subpoena or fails to attend after service of a subpoena, the court may issue a warrant to the sheriff of the
137 county to arrest the witness and bring the witness before the court.

138 **(i) Procedure when witness is ~~confined in jail~~ an inmate.** If the witness is ~~an prisoner inmate~~
139 confined in an institution, a party may move for an order to examine the witness ~~in the institution in the jail~~
140 ~~or prison~~ or to produce the witness before the court or officer for the purpose of being orally examined.

141 **(j) Subpoena unnecessary.** A person present in court or before a judicial officer may be required to
142 testify in the same manner as if the person were in attendance upon a subpoena.

143 Advisory Committee Notes